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In the

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 182

L. L. McGUIRE,

Petitioner,

v.

JOHN F. BAKER, et al.,

Respondents.

BRIEF OF RESPONDENTS GULF OIL CORPORATION R. E. GRIFFITH AND FRANK R. BASS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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May It Please The Court:

STATEMENT OF THE CASE

The statement of the case set forth in the petition for writ of certiorari is in some respects incomplete insofar as the matters concerning these respondents are concerned.

Respondent Gulf Oil Corporation is a Pennsylvania corporation engaged in the exploration for and production of oil and gas. Respondent R. E. Griffith is now, and was at the time of the occurrence of the events alleged by McGuire, the District Landman of Gulf's Midland District. Respondent Frank R. Bass has been employed by Gulf as a landman since 1954. These three respondents are hereinafter referred to as "Gulf."

Gulf began the acquisition of leases in Presidio County, Texas, in 1957 and obtained leases from various owners of mineral interests. It offered to purchase leases from petitioner on the lands in Sections 51, 72 and 95, Block 2, Texas Mexican Railway Co. Survey, in which petitioner claimed an interest at a price well in excess of the mineral value per acre thereof first alleged by petitioner. (Appendix below, pages 35, 61) However, petitioner declined to lease any of the lands in which he claimed to have an interest. Certain tracts of land including portions in which McGuire claimed an interest were found to be vacant, unsold public lands by the Land Commissioner of Texas in 1963, and were sold by him to M. D. Bryant. Gulf purchased an oil and gas lease from Bryant on those lands, and in 1963 drilled a well in the general area. The well resulted in a dry hole and there has been no commercial production of oil and gas therefrom.

Following the vacancy hearing before the Land Commissioner petitioner filed suit in October of 1962 in the United States District Court for the Western District of Texas, Austin Division (Cause No. 1313), seeking a cancellation

of the vacancy proceedings and a permanent injunction against the sale of the lands, alleging among other things a fraudulent conspiracy, commencing in 1961, to deprive him of his lands. While Gulf was alleged to have participated in the conspiracy, McGuire did not make them parties to that suit. (Appendix below, pages 47-68)

On June 19, 1963, the suit in the Austin court was dismissed for failure to state a claim upon which relief could be granted. This was reversed by the Court of Appeals for the Fifth Circuit and remanded for trial in 1964.[1] Thereafter in 1966 the trial court appointed a special master to consider issues concerning plaintiff's claim to the land there in question and whether the survey upon which the vacancy finding was based was substantially incorrect.

After a six weeks hearing before the special master it was determined that petitioner possessed sufficient title to the land to enable him to maintain the suit and that the survey was substantially incorrect. The Bryant defendants then disclaimed any interest to that land. By judgment entered on June 13, 1967, the trial court in Austin concluded that no vacancy existed as to the land claimed by McGuire and set the vacancy proceedings aside. He further held that neither the evidence introduced at the hearings nor the findings of the special master revealed any probability of proof of conspiracy. (Petition Appendix, page A-26)

In April of 1967, prior to the entry of that judgment in the Austin court, petitioner filed this action in the United States

[1] McGuire v. Sadler, 337 F.2d 902 (5th Cir. 1964).

District Court for the Northern District of Texas, Fort Worth Division. This complaint was filed against the same defendants as in the Austin case and against the Gulf defendants and others. Petitioner here alleged that his action arose under Article 1, Section 10, and the Fourteenth Amendment to the United States Constitution and 42 U.S.C. sections 1983, 1985 (2), (3), (1970), the Civil Rights Act. He claimed jurisdiction under 28 U.S.C. sections 1331, 1343 (1966). (Appendix below, pages 2-3) No claim of jurisdiction by reason of diversity of citizenship under 28 U.S.C. section 1332 (1966) was alleged or shown. Here McGuire alleged substantially the same facts as in the Austin case. For relief he asked that a constructive trust be impressed upon the moneys paid by Gulf in 1963 to M. D. Bryant for the lease on the lands covered by the vacancy award, and for damages for the alleged destruction of the speculative mineral value of his land and his time and money spent in surveying and in litigating the Austin case.

In the original complaint here McGuire asserted that the well drilled by Gulf in 1963 was on lands adjoining his land. (Original complaint, par. 36) That it was drilled on lands not claimed by him is correct. Although petitioner here admits at pages 12 and 19 of his petition that he surveyed his lands in 1965 and 1966, which was before he filed his original complaint in the Fort Worth court in 1967, he thereafter amended his complaint to contend that the well was drilled on land claimed by him in Section 72 of the Texas Mexican Railway Co. Survey. (Appendix below, page 13)

The trial court sustained respondents' motions for summary judgment, holding that petitioner's claims were now barred by the Texas two-year statute of limitation, Tex. Rev. Civ. Stat. Ann. art. 5526 (1958) and could and should have been asserted in the Austin case. (Petition Appendix, page A-9) The Court of Appeals for the Fifth Circuit affirmed. (Petition Appendix, page A-10)

ARGUMENT

The courts below properly applied the law governing this case and correctly disposed of petitioner's contentions which have any substance.

A. Petitioner has no Direct Cause of Action Against Gulf Under the Constitution of the United States.

McGuire contends at page 9 of his petition that both lower courts "held in effect that McGuire has no direct remedy under the Constitution [of the United States] and that this is only a civil rights suit." As a reason for granting the writ, at page 11, he further asserts a conflict with the decision of the court of appeals below on the appeal from the Austin case stating that the court there "held that McGuire had a cause of action under both the Contract Clause and the Fourteenth Amendment. * * *"

We do not understand the courts below to have so held in this case. However, if they did, the holdings were correct. This is particularly true as to the Gulf respondents. Neither do we understand the court of appeals to have so held in the Austin case. Rather, in that case, where different relief was sought as against defendants other than Gulf, the court

stated that petitioner "presents a claim of impairment of contract under Article 1, Section 10 of the United States Constitution." (Petition Appendix, page A-20)

McGuire thus continues the mistaken assumption that in this case and as against these petitioners he has two separate causes of action for relief, the one arising independently under the Constitution of the United States and another arising out of the Civil Rights Act for an alleged violation of his constitutional rights. Article 1, section 10, clause 1 of the Constitution of the United States is a prohibition against the states, and not against individuals and corporations such as the Gulf respondents. The fourteenth amendment to the Constitution also protects individuals against "state action." As to the Gulf respondents an assertion that they violated his rights guaranteed by the "contract clause" is "an allegation of fact which is impossible in law."[2]

Absent the Civil Rights Act McGuire alleged no cause of action here for which damages is available as a remedy, and this action the courts below properly held to be barred. No alternative common law tort action was claimed. Moreover, there being no diversity of citizenship, either actual or alleged, there would have been no jurisdiction of the federal court in this case in a tort action.

Neither do the decisions below, in the proper context of this case, conflict with the decisions of this court or of other courts of appeals as contended by petitioner at page 9. Pe-

[2] United Transport Service Employees of America, CIO, ex rel. Washington v. National Mediation Board, 179 F.2d 466 (D.C. Cir. 1949).

titioner fails to explain how his right to recover and these respondents' liability to him could be created by land patents from the State of Texas to McGuire's predecessors in title. There is no rational nexus, and the cases which petitioner cites at page 10[3] are both inapplicable to the instant case and generally appear to have been misconstrued. At issue in all of those cases was the effect of state legislation upon vested property rights, and not the claims which petitioner has asserted here.

B. There is No Conflict with the Decision Below On the Applicable Limitations Statute or Limitation Period.

In his second point, at page 11, petitioner argues that the decisions below conflict with a prior decision of this Court and a decision of the Court of Claims in failing to hold that he could wait "until the end of the four year taking, irrespective of limitation laws, before filing suit for compensation and damages." Under this argument petitioner refers to his claims for decline in value of his land and for legal and surveying expenses which were performed in 1965 and 1966.

The decision of this Court cited by petitioner is *U. S. v. Dickinson*, 331 U.S. 745 (1947), an inverse condemnation case brought to recover compensation for the value of plaintiff's land inundated by water impounded by a federally owned dam. The facts are unique and since the instant case involves no question of eminent domain, it is wholly inapposite.

[3] Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1816); Fletcher v. Peck, 6 Cranch 87 (1809); Wood v. Lovett, 313 U.S. 362 (1941); Anderson-Tully Co. v. Murphree, 153 F.2d 875 (8th Cir. 1946).

In *Terteling v. U. S.*, 334 F. 2d 250 (Ct. Cl. 1964) also cited by petitioner, plaintiff brought an action to recover costs and expenses incurred in defending certain lawsuits. His claim was based upon breach of an express term of a contract with a government agency that it would furnish gravel pit sites without cost. The litigation expenses for which plaintiff sought to recover arose from a dispute with claimants to the gravel pit sites. The issue of limitation was determined by applying the federal statute providing six-year limitation periods for actions in the Court of Claims. This holding was based upon the applicable federal statute of limitation and is not applicable to the instant situation which is clearly governed by state limitation law.[1]

Despite the uniformity of Texas decisions upon the point, petitioner also tenders an argument at page 13 that the decision of the lower court is "in conflict with applicable state law as to which statute of limitation applies." As pointed out by the courts below, in Texas an action for liability created by statute is considered an action for debt not evidenced by a contract in writing and is governed by the two-year statute of limitation. Tex. Rev. Civ. Stat. Ann. art. 5526 (1958). (Petition Appendix, pages A-5, A-6, A-14 and A-15)

Beginning at page 13, petitioner argues that the ten-year statute, Tex. Rev. Civ. Stat. Ann. art. 5510 (1958), applies to this case. As shown on page 3 of the petition, this statute has application to the recovery of lands and not to suits for damages thereto as is here involved; and *Brazos River Authority v. City of Graham*, 163 Tex. 167, 354 S.W. 2d 99 (Tex.

[1] Beard v. Stephens, 372 F.2d 685 (5th Cir. 1967) and cases cited by the court below. (Petition Appendix, page A-14)

1961), cited by petitioner is equally inapplicable. There plaintiff brought suit against a river authority for the flooding of its property as a result of a dam maintained by the river authority. The court held that taking occurred when the operation of the dam commenced and that the land limitation statute, rather than the general four-year statute, applied. Since that case involved an inverse condemnation proceeding, it can have no logical application to the litigation at hand, particularly as to Gulf.

Under point three, petitioner also argues that his cause of action is one founded upon a contract in writing and thus governed by the four-year statute of limitation governing actions on written contracts, Tex. Rev. Civ. Stat. Ann. art. 5527 (1958). This argument is based upon the reasoning that the patent to McGuire's predecessors was a contract in writing and that the State of Texas breached this contract by selling the land. Petitioner does not now and has never alleged or argued that a written contract existed between himself and Gulf. Therefore, his argument concerning the statute of limitation applicable to actions based upon written contracts is also inapplicable to this respondent.

Petitioner again argues that his two suits were in effect one — for equitable relief. As succinctly stated by the court of appeals, the fact that one of the remedies sought is equitable does not constitute the cause of action one in equity, and petitioner's effort to avoid the effect of the statute of limitation and his refusal to seek this relief in the Austin case by asking for equitable relief is ill-founded as the court of appeals perceived.

Nor can petitioner's argument concerning a constructive trust have any application to Gulf in that petitioner has neither alleged nor argued that Gulf has ever received any funds from any person throughout the pleadings and briefs he has filed in this and the earlier suit. In his complaint his prayer for impression of a constructive trust applied only to moneys received by M. D. Bryant. The imposition of a constructive trust as to these respondents is not possible.

In his point four, petitioner cites *O'Sullivan v. Felix*, 233 U.S. 319 (1914) to support his contention that the decision below conflicts with that decision of this Court in failing to apply the same limitation statute as would be applicable to a similar action which is not a civil rights violation. In that case, where plaintiff brought an action for damages for assault, it was held that the five-year federal statute of limitation did not apply and that the application of a state statute of limitation is not precluded because the action depends or arises under the laws of the United States. The decision, in its proper context, was relied upon by both courts below. Moreover, as to the point attempted to be made by petitioner, the trial court clearly demonstrated that the two-year statute would apply here even if McGuire's action were considered as a suit for fraudulent conspiracy, for damages based upon fraud, or for injury to real property. (Petition Appendix, pages A-6, A-7)

C. The Courts Below Properly Decided This Action.

There is no miscarriage of justice in the decision of the court below, as contended by petitioner. His statements show that he was offered and refused a substantial sum

of money for an oil and gas lease, just as was paid for leases on the land declared to be vacant and on other land where the dry hole was drilled. Now a substantial windfall has not materialized.

Rather than hold that McGuire has not had a trial of his conspiracy complaint, the trial court in Austin on remand in that case prefaced the remarks partially quoted by McGuire on page 19 of his petition by the finding that

> "* * * the evidence adduced in this case as a result of extensive discovery proceedings fails to indicate any probability of proof of a conspiracy on the part of any of the defendants and none is reported in the findings of the Special Master," (Petition Appendix, page A-26)

Petitioner's posture in these proceedings was correctly characterized by the trial court in the last paragraph of his opinion. (Petition Appendix, pages A-8, A-9) McGuire has had his day in court on this matter — many of them. While he represents himself here, he is no stranger to the courtroom;[5] nor is he a stranger to conspiracy actions under the Civil Rights Act.[6] He had adequate opportunity to present his claims in his prior suit in the Austin court, and has shown no tenable basis for being permitted to avoid settled law and to continue piecemealing his litigation.

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[5] See McGuire v. Bond, 271 S.W.2d 508 (Tex. Civ. App. 1954, writ ref'd n.r.e.); City of Dallas v. McGuire, 159 S.W.2d 958 (Tex. Civ. App. 1942), rev'd, 170 S.W.2d 722 (Tex. 1943); McGuire v. City of Dallas, 151 S.W.2d 617 (Tex. Civ. App. 1941, writ dismissed).

[6] See McGuire v. Todd, 198 F.2d 60 (5th Cir. 1952), cert. denied, 344 U. S. 835 (1952).

CONCLUSION

Petitioner has shown no special and important reasons which would merit this court's granting a writ of certiorari. (U. S. Sup. Ct. Rule 19, 28 U. S. C.A.) Respondent respectfully submits that a writ of certiorari should not be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Brief in Opposition has been mailed to Petitioner and to all counsel of record.

_____
John E. Thomason
Of Counsel for Respondents